

REMARKS

The sole claim in this application remains unchanged herein.

The Office Action appears to have understood all of the statements made in applicant's Request for Reconsideration filed October 13, 2006. Applicant reaffirms those statements and incorporates by reference in the present request the entirety of the Remarks of the October 13, 2006 Request.

The Office Action mailed November 29, 2006 continues to reject the sole claim of this application under § 102(b) over the same references cited in the Office Action of April 13, 2006. The latest Office Action asserts that applicant's arguments have not been found persuasive for reasons including the following:

Moreover, the Upovrom Plant Variety Database (see Exhibits A and B) lists the breeder and assignee names. One of ordinary skill in the art could have search[ed] the Internet for the breeder's name "Chrysanthemum Breeders Association" (see UPOVROM Plant Variety Database 2005/05 and Exhibits A and B) at <<http://www.cba.-nv.nl/index.cfm?act=Contact.formulier>>. By clicking on "contact," one of ordinary skill could have contacted Chrysanthemum Breeders Association by mail, telephone, fax or e-mail concerning the plant availability and/or where to purchase the plant. One cannot overlook the fact that when contacted by one of ordinary skill in the art, the breeder, eager to sell, would indicate to the former that the plant is available under a different name.

Office Action, November 29, 2006, page 3; emphasis added here.

The alleged fact presumed in the Office Action that when contacted by one of ordinary skill in the art the breeder, here applicant, would disclose to that person that the claimed plant is publicly available under a certain name, is a presumption completely without factual or evidentiary basis in this record. In fact, applicant hereby represents to the PTO that no such

things occurred relevant to the present application or the subject matter thereof, and at all relevant times it was applicant's policy not to disclose publicly before PBR registration the identity of a plant known under its Breeders' Reference Number. As pointed out in the Request for Reconsideration filed October 13, 2006, this did not occur in the case of the Dutch PBR [Exhibit A] until June 16, 2001, and in the case of the Polish PBR [Exhibit B], until June 30, 2001, both dates less than four weeks before the filing date of the instant U.S. plant patent application.

Thus, in the present case, there is no basis in this record, nor could there be, for the above-quoted presumption upon which the conclusion that applicant's prior statements and arguments have not been found persuasive. In the present case, the information publicly available more than one year before the filing date of the instant application, concerning the subject matter claimed in this instant application, was insufficient to support a rejection under § 102(b). Sale of the claimed plant outside the United States in no way placed one of ordinary skill in possession of, i.e., having knowledge of, that plant and how to reproduce it in the United States more than one year prior to the filing date of the instant application. And the documentary references do not include the required plant material to do so. Moreover, there is no single reference which discloses all elements of applicant's presently-claimed invention to thereby allegedly anticipate under § 102(b) applicant's claimed subject matter.

Application No.: 09/902,749
Attorney Docket: 28967.0112

For all the reasons stated in the Request for Reconsideration filed October 13, 2006, and those stated above herein, applicant respectfully requests reconsideration and allowance of the instant application.

Respectfully submitted,

STEPTOE & JOHNSON LLP

Date: May 29, 2007

A handwritten signature in black ink, appearing to read "Roger W. Parkhurst", written over a horizontal line.

Roger W. Parkhurst
Registration No. 25,177

STEPTOE & JOHNSON LLP
1330 Connecticut Ave., N.W.
Washington, DC 20036
Telephone: 202-429-3000

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